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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,900	11/13/2003	Mahmoud M. Abdel-Monem	P05844US02	7757

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DES MOINES, IA 50309-2721

EXAMINER

OH, TAYLOR V

ART UNIT	PAPER NUMBER
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1625

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/706,900	Applicant(s) ABDEL-MONEM ET AL.	
	Examiner Taylor Victor Oh	Art Unit 1625	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see pages 2-5.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

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It is noted that applicants have filed an Amendment after the Final Rejection on 3/1/05; applicants' attorney has addressed the issues of record. The proposed amendment will be entered ;however, it is not in a condition for allowance.

The Status of Claims

Claim 1 is pending.

Claim 1 has been rejected.

Claim Objections

The objection of claim 1 has been withdrawn due to the modification made in the amendment .

Claim Rejections - 35 USC § 103

The rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Cardinal (U.S. 2,849,468) has been maintained for the reasons of the record on 1/09/05 .

Applicants' Argument

Applicants argue the following issues:

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- A. Cardinal does not disclose that the salt has 1-2 moles of zinc per mole of glutamic acid; Cardinal instead has stated that 1-2 mole equivalent of a zinc salt was added in order to precipitate the glutamic acid, thereby focusing on maximizing the precipitation of glutamic acid;
- B. In the prior art, it says that the exact chemical formula for these zinc glutamate salts prepared in accordance with the instant process is not definitely known; therefore, it not understood how it would have been obvious to have been prepared Applicants' 1:1 complexes;
- C. The purpose of the present invention was to provide complexes of trace elements having the desired properties, i.e. enhanced bioavailability for improving the performance of livestock.

Applicants' arguments have been noted, but the arguments are not persuasive.

First, regarding the first argument, the Examiner has noted applicants' arguments. However, regardless of maximizing the precipitation of glutamic acid, the prior art does teach that the molar range of zinc from 1 mole to 2 moles is used per mole of the glutamic acid when the same salt is prepared from refined glutamic acid(see col. 4, lines 5-7). Therefore, there is a teaching of the guidance in Cardinal that the claimed formation of the 1:1 neutral complex of essential trace elements and a dicarboxylic alpha amino acid is quite possible from the above passage.

Second, regarding the second argument, the Examiner has noted applicants' arguments. However, this is just a general statement for the uncertainty about the exact chemical formula for these zinc glutamate salts; however, it does not mean that the reaction formation of 1:1 neutral complex between essential trace elements and a dicarboxylic alpha amino acid is impossible to figure out. This is because the resultant product depends on the amount of each initial reactant.

Therefore, if the skilled artisan in the art had desired to produce a 1:1 neutral complex of zinc and glutamic acid different from the 1:1.5 neutral complex from Example III of the prior art, it would have been obvious to the skilled artisan in the art to be motivated to produce such a complex selectively and substantially as an alternative by using the teachings of the Cardinal reference because glutamic salt is in demand for the purpose of flavor enhancement. Also, this is because the skilled artisan in the art would expect the formation of the 1:1 neutral complex of zinc and glutamic acid to be successful as the guidance (see col. 4, lines 5-7) shown in the prior art.

Third, regarding the third argument, the Examiner has noted applicants' arguments. However, on the contrary to applicants' argument, the claim is directed to the formation of 1:1 neutral complex crystals of the dicarboxylic alpha amino acid, such as zinc glutamate. The claim has nothing to do with enhanced bioavailability for improving the performance of livestock. Therefore, applicants' argument is irrelevant to the issues of the currently claimed invention.

Therefore, the rejection of the claim has been maintained.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 571-272-0689. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*** Taylor Oh
3/15/05


Cecilia J. Tsang
Supervisory Patent Examiner
Technology Center 1600